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## ROUTING AND RECORD SHEET

SUBJECT: (Optional)				
FROM: <input type="text"/> Liaison Division Office of Legislative Liaison		EXTENSION	NO. <i>OLL 85-2232</i>	DATE 31 July 1985
TO: (Officer designation, room number, and building)		DATE	OFFICER'S INITIALS	
		RECEIVED	FORWARDED	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. <input type="text"/>				<p>Attached is the Supplemental Retirement Bill introduced by Senator Ted Stevens (R., AK) on 30 July. Also attached are a Section by Section Analysis and Comparative Study. Hearings will be scheduled after the August recess.</p> <div style="border: 1px solid black; height: 100px; width: 200px; margin: 10px auto;"></div> <p style="text-align: center;"><i>100-13</i></p> <p style="text-align: center;">STAT</p> <p style="text-align: center;">STAT</p> <p style="text-align: center;">STAT</p> <p style="text-align: center;">STAT</p> <p style="text-align: center;">STAT</p> <p style="text-align: center;">STAT</p>
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### Section-by-Section Analysis

The opening section (section 2) provides for the purpose of the legislation. The purposes delineated include providing a stable and flexible retirement plan which is comparable to good private sector retirement benefits plans, enhancing portability of retirement assets between Federal jobs and jobs outside the Federal government, and ensuring a fully funded and financially sound federal retirement program.

#### TITLE I - CIVIL SERVICE PENSION SYSTEM

Section 101(a) amends title 5, United States Code, by inserting a new chapter 84, entitled "Civil Service Pension System" (CSPS).

Subchapter I of this chapter provides definitions for administration of the CSPS, many of which are the same as or similar to those used in chapter 83 of title 5. New or modified definitions include average pay (highest 5 years) and basic pay (rate established pursuant to law, without regard to any limits on authority to pay). Definitions of firefighter and law enforcement officer are more specific than those used in chapter 83. The subchapter also identifies the participants in the new CSPS and specifies its relationship to the Social Security Act. Employees of the District of Columbia are specifically excluded. Employees of the current Civil Service Retirement System (CSRS) are included if they so choose pursuant to Section 8471.

Subchapter II describes the basic retirement plan, which is a defined benefits plan applicable to all permanent employees covered by the Social Security System on or after January 1, 1984 and any employees subject to the CSRS who elect to join the CSPS.

Section 8411 lists the combinations of age and service which establish entitlement to an immediate annuity.

Subsections (a) and (b) provide for an immediate annuity at age 55 with 10 years of service and age 62 with 5 years of service.

Subsections (c) and (d) provide for an immediate annuity to the special retirement classes (law enforcement officer, firefighter, or air traffic controller) after 25 years of service in the occupation.

Subsection (e) provides for an immediate annuity to an employee who is separated from the service involuntarily and who has completed 25 years of service or is not less than age 50 with 20 years of service.

Subsection (f) provides that the annuity authorized by this section is computed under sections 8413 through 8415 of this title.

Section 8412 provides for deferred retirement at age 62 to a participant who is under age 62 and separates from Federal employment after completing 5 years of service or at age 55 to a participant who is under age 55 and separates from Federal employment after completing 10 years of service.

Section 8413 provides the formula for computing the annuity a participant is entitled to receive. The formula is one percent of the average pay over the five highest consecutive years multiplied by the number of years of service. For the special retirement classes, an annuity supplement equal to the estimated amount of Social Security benefits payable at age 62 will be paid to annuitants from age 55 until age 62. This supplement will be increased annually by the percent increase in the Social Security Act average wage index. A pro rata formula for part time service is also specified.

Section 8414 provides for reduction of an immediate annuity that begins before age 62. The reduction is two percent for each year the participant is under age 62 on the date of a voluntary retirement at age 55 with 30 years of service or an involuntary retirement under section 8411(e). The annuity is reduced by five percent for each year the participant is under age 62 for a participant who elects to receive an annuity after age 55 but before completing 30 years of service. A five percent reduction for each year the participant is under age 55 applies to law enforcement officers, firefighters, air traffic controllers, and military reserve technicians.

Section 8415 provides for actuarially reducing an annuity to provide for one or more survivor annuities.

Subsection (a) provides for an automatic annuity reduction to provide a survivor annuity to the spouse of a married participant unless the participant and his or her spouse jointly waive the spouse's right to a survivor annuity as provided in section 8416.

Subsection (b) provides for an automatic annuity reduction when the participant has elected to provide a survivor annuity to a former spouse.

Section 8416 provides that OPM shall prescribe methods of payment of annuities and participant election of the method preferred. Included in those methods are a single life annuity and a joint-and-survivor annuity. An individual designated as having an insurable interest in the annuitant may receive an survivor annuity under this provision.

An individual who is married on the date he or she applies for payment of the annuity to begin may elect a method of payment other than a joint-and-survivor method only if the individual and his or her spouse jointly waive an annuity under this method.

Section 8417 provides that a participant who retires voluntarily prior to age 62 may elect to have his or her annuity payments adjusted in such a way that the total amount received before and after receipt of Social Security benefits begin is approximately the same. This does not apply to deferred retirement or to the special retirement classes.

Section 8418 provides that each Federal agency shall contribute an amount equal to the normal cost of the benefits for the agency's employees, as determined by OPM. It also provides for a yearly determination of the Fund's supplemental liability which is to be amortized over 30 years by payments from the Secretary of the Treasury or the Postmaster General of the United States, as appropriate. OPM may use the current CSRS Board of Actuaries for making actuarial determinations and valuations for the CSPA.

Section 8419 provides that military service is creditable service and that the Department of Defense Military Retirement Fund shall reimburse the fund annually for the normal cost relating to the military service of employees and members who become participants during the fiscal year. This excludes employees covered by the CSRS who elect under section 8471(a) to join the CSPA.

Subchapter III describes the thrift savings plan, which is an optional plan permitting participants to contribute a percentage of their basic pay or disability benefits to a selected investment vehicle and have those contributions matched by the government.

Section 8421 allows participants to contribute up to 10 percent of their basic pay to the thrift plan. Those participants who are receiving disability benefits may contribute up to 10 percent of the disability benefits payable. An opportunity to change the contribution amount will be provided at least annually. Employing agencies are

required to match the participant's contribution, up to five percent of the participant's annual rate of basic pay or the disabled participant's disability benefits. Amounts contributed to the thrift fund are not included in the employee's current gross income for income tax purposes.

Section 8422 provides a vesting schedule for the thrift plan. A participant immediately vests in his contributions and their earnings. Beginning after one year of service, the participant vests in 20 percent of the employer's contribution. This increases by 20 percent for each additional year of participation up to five years and beyond, when the entire share contributed by the employer, plus interest, is vested. A participant who dies while employed by the government immediately vests in 100 percent of the employer's contribution and the earnings on it. For a participant who separates from employment before becoming entitled to an immediate annuity, any employer contributions which he has not vested in are transferred to the Treasury for credit to Miscellaneous Receipts.

Section 8425 describes the optional ways an employee may choose from to receive thrift account payments from the thrift plan at separation from employment, depending on his or her status under the basic pension plan.

Subsection (a) permits a participant who is entitled to an immediate annuity to elect one of the four methods below:

- (1) An immediate annuity
- (2) A deferred annuity
- (3) A lump sum or installment withdrawal
- (4) Transfer to an individual retirement account  
or other qualified retirement plan

Subsection (b) permits a participant who is entitled to a deferred annuity to elect one of the methods described above. For the first three methods, the money is not payable until the date of the participant's eligibility for retirement.

Subsection (c) permits a participant who is not eligible for any pension to elect one of the three methods below:

- (1) An annuity at age 62
- (2) A lump sum or installment withdrawal at age 62
- (3) Transfer to an individual retirement account  
or other qualified retirement plan

Subsection (d) permits a participant who elected to defer an annuity payment to modify the date specified in that election.

Section 8424 describes how annuities available from the thrift plan will be computed and paid. The Thrift Investment Board will prescribe methods of payment which must include a single life annuity and a joint-and-survivor annuity. An individual designated as having an insurable interest in the annuitant is also covered under this provision. The amounts will be determined actuarially. Methods for providing



annual increases in the annuity payable must also be prescribed.

Section 8425 provides rules for elections by participants entitled to payments or transfers from the thrift plan.

Section 8426 establishes the Thrift Savings Fund and prescribes how monies in the Fund may be used. Included in these uses is a requirement for the Board to establish a program to make loans to participants in cases of hardship.

Section 8427 describes how employee and employer money will be invested.

Subsection (a) defines terms used in application of this section.

Subsection (b) requires the Board to establish three funds under which sums in the Thrift Savings Fund may be invested and provides an option to establish other funds. The funds are:

(1) A Government Securities Investment Fund which is invested in special issues of the Treasury.

(2) A Fixed Income Investment Fund which is invested in insurance contracts, certificates of deposits, or other instruments.

(5) A Common Stock Index Investment Fund which is invested in common stock issues included in a commonly recognized stock index, with the percentage invested in a given stock to be the same as the percentage of that stock's market value included in the index.

Subsection (c) specifies that sums in the Thrift Fund which are not designated or available to be invested in one of the other investment funds will be invested in the Government Securities Investment Fund.

Subsection (d) states that participants may elect, at least once each year, the investment funds into which they wish to have their Thrift Savings Fund invested or reinvested.

Subsection (e) specifies that, during the implementation phase of the Thrift Savings Fund, a certain percentage of the contributions made by and for the participant must be invested in the Government Securities Investment Fund. For participant contributions, the initial amount is 100%, reduced by 20% each year over a five year period, beginning in 1988. For agency contributions, the same phasing schedule applies, beginning in 1995. All amounts earned on these contributions must be reinvested in the Government Securities Investment Fund. Participants hired during the temporary adjustment period will have contributions for that period, as described in section 8473(b), invested in the Government Securities Fund.

Subsection (f) provides for the Secretary of the Treasury to issue, as needed by the Fund, two year notes bearing an interest rate equal to the average market yield of all such notes as of the end of the month preceding the date of issue.

Section 8428 prescribes how the Executive Director is to account for the funds of each participant in the System and requires that the participant be provided an annual statement of his or her account. An annual audit report by an independent qualified public accountant is also required.

Subchapter IV describes the benefits available to survivors of deceased participants and former participants from the basic plan and the thrift plan.

Section 8451 provides for payment of death benefits from the basic plan to the surviving spouse of a participant or a former participant other than an annuitant if the deceased had five or more years of service. If the participant or former participant was eligible to retire, the survivor gets 50 percent of the accrued annuity (computed as if he or she had retired the day before death, with any applicable reductions for early retirement and for election of a survivor benefit). If he or she was not eligible to retire, the benefit is computed as described above but payment is delayed until the date he or she would have been eligible to retire.

Section 8432 provides for payment of death benefits from the basic plan to the survivor of an annuitant in accordance with an election under section 8416, 8434(a), or 8436(c).

Section 8435 provides for survivor benefits from the thrift savings plan. If the deceased participant or former participant is not survived by a spouse, payment is made to an individual designated as having an insurable interest or,

if no such designation was made, to the deceased individual's estate. A surviving spouse entitled to payment of benefits may elect to receive the money under one of three methods.

These are:

- (1) An annuity
- (2) Transfer of the money to an individual retirement account
- (3) Lump sum or installment withdrawal

Section 8434 provides for basic and thrift savings plan survivor benefits to a spouse acquired after payment of the annuity begins. The election is effective the first day of the second month beginning after the election is received but not earlier than nine months after the date of the marriage. A deposit to retroactively fund this election is required as needed. An election of a annuity reduction to provide this benefit is not permitted if the spouse acquired after retirement was married to the annuitant when payment of the annuity began and the annuitant and spouse had jointly waived the right to a survivor benefit.

Section 8435 states the entitlement of eligible former spouses to receive survivor benefits from the basic plan and the thrift plan. The benefits from the basic plan are the same as for a surviving spouse under sections 8416, 8431, or 8432. Benefits from the thrift fund are determined actuarially.

Section 8436 provides for an annuitant to elect a survivor benefit from the basic plan and the thrift plan for an eligible former spouse.

Subsection (a) permits an annuitant who has a former spouse to elect an annuity reduction in order to provide a survivor annuity to such former spouse. The election must be made on or before the date the annuitant applies for payment of an annuity from the basic plan or, if later, within two years after the date on which the marriage of the former spouse to the annuitant is dissolved. A deposit, computed to reflect the amount by which the annuity would have been reduced if it had been continuously in effect since the date the annuity commenced, is required. An election of an annuity reduction to provide a survivor benefit to a former spouse shall not be effective if it:

- (1) conflicts with a court order or decree,
- (2) exceeds the funds available to pay it, or
- (3) is made without the written consent of the annuitant's spouse.

Subsection (b) provides that an annuitant whose annuity is being reduced to provide a survivor benefit to a former spouse may elect to provide or increase a survivor annuity for any other former spouse. This election must occur within two years after the former spouse's date of death or remarriage before age 55.

Subsection (c) provides for an annuitant to elect to provide a survivor annuity to his or her spouse if the entitlement of an eligible former spouse is terminated or reduced due to remarriage or death.

Subsection (d) provides for a waiver of the requirement that the spouse of a retiree waive a right to a survivor benefit in certain situation.

Section 8437 provides for termination of a survivor annuity on death of the spouse or former spouse, dissolution of the marriage, or remarriage of the former spouse before reaching age 55.

Section 8438 covers deposits to the Fund.

Subsection (a) requires a market rate of interest payment on any deposit needed to fund an annuity election under section 8434(c) or 8436.

Subsection (b) provides for offsetting the retiree's annuity if the required deposit is not made.

Subsection (c) permits OPM to extend the time limit for making the required deposit.

Subchapter V describes the disability benefits available to a participant who has at least 18 months of service.

Section 8441 provides definitions for the administration of this benefit.

Section 8442 provides that an eligible participant is entitled to receive benefits under this subchapter if disabled based on the Social Security definition and under 62 or if unable to work in his current position, not qualified for reassignment, and under 55. At age 62/55, the annuity is payable under the basic plan provisions of subchapter II based on at least 5 years actual service plus projected service through age 62/55. Average pay for the purpose of

converting the disabled person from the disability rolls to the retirement rolls at age 62/55 is the average pay on the date of disability, increased each time after that date by the Consumer Price Index minus two percentage points.

Section 8443 provides the following methods for computing disability benefits:

- (1) If eligible for Social Security or ineligible for Social Security only as a result of insufficient quarters of coverage, 60 percent of average pay minus 100 percent of the Social Security benefit while the participant is under age 62.
- (2) If occupationally disabled, 60 percent of average pay for the first year. After the first year, 40 percent of average pay minus Social Security benefits, if any, while the participant is under 55 years of age.

Section 8444 requires a claim for disability benefits to be filed before the date the participant separates from employment by the Federal Government or within 1 year after. This time limit may be waived by the administrator of benefits.

Section 8445 requires the administrator to direct medical examinations for disability retirement applicants or benefit recipients.

Section 8446 requires that an applicant who is determined able to perform the work required in any position offered by

his employing agency for which he is qualified, is at the same grade or level as his current position, and is within his commuting area, must be considered for appointment to such position. The applicant is entitled to appeal a determination that he is able to perform the work required of such position.

Section 8447 provides for termination of disability benefits to an individual who recovers from the disability before reaching age 62 or, in the case of an employee who is occupationally disabled, age 55. Recovery is presumed to occur when income for one year equals 60 percent of the current pay for the individual's former grade. These benefits may be resumed if there is a recurrence of disability. In the case of an individual whose benefits were terminated due to restored earning capacity, benefits are resumed if he is not reemployed within one year, his disability continues, and his income for one year is less than the amount establishing his restored earning capacity.

Section 8448 establishes that an individual is not entitled to receive both disability benefits under this chapter and injury compensation benefits under subchapter I of chapter 81 of this title for the same period of time.

Section 8449 provides for disability benefits for a military reserve technician who is separated from employment as a technician due to a disability which disqualifies him from membership in the National Guard or other reserve component, as the case may be, or from holding the military grade required for such employment and who is not placed in another position.



Section 8450 provides that OPM will contract with one or more insurance companies or other firms to serve as a third party administrator for the disability program provisions which OPM is not specifically required to administer. Each contract awarded may not exceed 5 years and may include a provision authorizing extensions for 1 year at a time.

Section 8451 provides requirements for an annual accounting by the third party administrator to OPM.

Section 8452 provides for the establishment of an Employees' Disability Insurance Fund in the U.S. Treasury and requires agencies to make payments to the fund from their salary appropriations.

Subchapter VI describes general provisions applicable to the administration of the basic plan.

Section 8461 provides that OPM shall pay all benefits payable under the basic plan from the Fund and shall administer all provisions not specifically required to be administered by the Board or any other agency. OPM is also authorized to contract for the performance of any of these functions.

Section 8462 provides for an annual adjustment to the basic pension as a result of an increase in the Consumer Price Index (CPI). The increase will be the percentage increase in CPI minus 2 percentage points. The adjustment is made in December (payable in January), and is based on the change from September to September. A pro rata share of the increase is payable to retirees or survivor annuitants for whom this is the first increase.

Section 8463 provides that each annuity and disability benefit is stated as an annual amount, one-twelfth of which is the monthly rate payable.

Section 8464 provides that a participant's annuity under the basic pension commences on the first day of the first month after the participant separates from government employment or such later date as he or she elects. It terminates on the date of death or other terminating event provided by law. It further provides that a survivor annuity commences on the first day of the first month after the date of death of the participant or retiree on whom the annuity is based and terminates on the last day of the last month ending before the surviving spouse dies or remarries before age 55, unless another date is specified in accordance with this chapter.

Section 8465 provides that an individual entitled to receive a basic pension may waive receipt of all or part of the benefits. An individual may also make allotments from the benefit payment.

Section 8466 provides that an application for benefits must be received before the former participant's 115th birthday; for survivor benefits, the application must be received within 30 years after the death or other event which establishes entitlement to the benefit.

Section 8467 requires compliance with the terms of a court order requiring payment of an annuity, in whole or in part, to another person.

Section 8468 provides for termination of an annuity when an annuitant is reemployed by the Government. Upon termination of the employment, his annuity rights are redetermined. The amount of the annuity resulting from a redetermination may not be less than the amount of the terminated annuity plus any COLA increases.

Subchapter VII outlines the transition provisions for individuals covered by the CSRS who choose to participate in the CSPA.

Section 8471 permits participants in the current system (CSRS), other than District of Columbia government employees, to elect to participate in the new system (CSPA) during the first year it is in effect and to retain accrued credit for entitlement to benefits under the CSRS for service subject to that system. It also provides that rehires who are required to participate in the CSPA retain credit earned under CSRS and are permitted to deposit to the CSRS fund any amount previously refunded. Survivor benefits may be payable based on conditions of eligibility and service under both CSRS and CSPA.

Section 8472 provides that CSRS participants who elect to participate in the CSPA are allowed credit for service under both systems for purposes of determining eligibility to retire in both systems and of vesting in the thrift plan. Pay for such individuals subsequent to beginning participation in the CSPA is taken into account in computing average pay under both systems. Disability benefits are provided only under the CSPA.

Section 8473 provides that service by a participant during the temporary adjustment period will be recognized as years of participation for the purpose of vesting in the employer's contributions to the Thrift Savings Fund under section 8422. For such participants, monies will be transferred from the Fund to the Thrift Savings Fund in an amount which equals twice his or her contributions plus interest for any calendar year at the rate determined under section 8354(e) of title 5. The amount transferred will be in the form of interest-bearing securities of the United States. For vesting purposes, half of the amount will be treated as a contribution from the participant and half as a contribution by the employing agency. Participants hired during the interim period who made a deposit to cover military service will receive a refund of the deposit.

Section 8474 defines "reemployed annuitant" for various Government retirement systems. This section provides that a reemployed annuitant retains entitlement to the Government retirement system under which he/she retired. It further provides that service performed as a reemployed annuitant under CSPA shall be credited only for eligibility to retire under CSPA and cannot be considered creditable service for the annuitant's previous retirement system. Also, pay earned as an employee before and after reemployment is considered in computing average pay under both the CSPA and the annuitant's Government retirement system.

Section 8475 excludes former CSRS participants who join the CSRS from the windfall reduction and the public pension offset provisions of the Social Security Act.

Section 8476 authorizes OPM to prescribe regulations to carry out this subchapter.

Subchapter VIII describes the Civil Service Thrift Investment Management System.

Section 8491 establishes a Civil Service Thrift Investment Board, composed of the Chairman of the Federal Reserve Board, the Secretary of the Treasury, the Director of OPM, and two representatives of Federal employee organizations appointed by the President, one of whom must be from a labor organization and one of whom must be from a Federal employee management organization. The Chairman of the Federal Reserve Board will chair the Board. Specific responsibilities of the Board are detailed here.

Section 8492 provides for the establishment of a Civil Service Thrift Advisory Committee, composed of six members appointed by the Board. Three are to be investment asset managers and three are to be administrators of thrift savings plans.

Section 8493 provides for the Board to appoint an Executive Director to carry out the policies of the Board in administering the Thrift Savings Fund. The Executive Director is authorized to enter into contracts as necessary to carry out these policies.

Section 8494 states the investment policy governing the Thrift Savings Fund. This includes a provision that investments chosen are likely to receive broad acceptance by participants and the public, and a provision that the two funds which specifically provide for private sector investments should not require a significant level of active investment decision-making.

Section 8495 provides rules of administration for the Board.

Section 8496 identifies fiduciaries and their responsibilities, defines "party in interest," states basic standards of fiduciary conduct, lists prohibited practices by fiduciaries, and describes penalties for committing a prohibited practice.

#### TITLE II - AMENDMENTS RELATING TO SOCIAL SECURITY.

Section 201 amends section 210(a)(5) of the Social Security Act to cover service performed by an individual who commences participation in the CSPS.

Section 202 amends section 3121(b)(5) of the Internal Revenue Code of 1954 to tax the wages of an individual who commences participation in the CSPS.

#### TITLE III - MISCELLANEOUS AND CONFORMING AMENDMENTS

Section 301 extends the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 from January 1, 1986 until January 1, 1987.

Section 302(a) amends section 8331 of title 5, United States Code, to limit coverage under the CSRS for District of Columbia government employees to those first employed before January 1, 1987.

Section 302(b) amends section 8332 of title 5, United States Code, by adding a new subsection excluding participants in the CSPA from receiving service credit under the CSRS, except in certain limited situations affecting participants retaining entitlement in the CSRS under section 8472.

Section 302(c) amends section 8333(b) of title 5, United States Code to modify the requirement that an employee or Member must complete at least one year of creditable service as a participant in the CSRS out of the last two years before separation to include service under the CSRS. It also amends section 8333(c) by making the contribution requirements applicable only to service performed while not a participant in the CSPA.

Section 302(d) amends section 8334(a) of title 5, United States Code, relating to deductions from an employee's pay for both CSRS and Social Security coverage. An employee who was covered by the CSRS on December 31, 1983 and who was subsequently covered by Social Security will continue in the CSRS at a reduced contribution. The contribution to CSRS will be equal to the excess of the employee's normal CSRS contribution over the OASDI portion of the Social Security tax.

Section 302(e) amends section 8339 of title 5, United States Code, to specify that the CSRS benefit received by those covered under subsection (d) will be offset by 100% of the Social Security benefit attributable to federal service.

Section 302(f) amends section 8347(a) of title 5, United States Code, to permit OPM to contract for the performance of administrative services necessary to carry out its responsibilities under subchapter 83.

Section 302(g) amends section 8348(a) of title 5, United States Code, to clarify that the Civil Service Retirement and Disability Fund is available to pay benefits and administrative expenses for both chapters 83 and 84 of such title.

Section 303 amends section 1005(d) of title 39, United States Code, to include officers and employees of the Postal Service for coverage under the provisions of chapters 83 and 84 of title 5.

Section 304 requires agencies to pay all group life insurance basic plan costs for CSPA participants from salary appropriations.

Section 305 amends sections 8901(10) and 8905(c) of title 5, United States Code, to incorporate health benefit plan eligibility requirements for former spouses as a result of P.L. 98-615. It also amends section 8905(b) to permit a family member of a deceased employee or annuitant who was enrolled in a health benefits plan to continue that enrollment.



Section 306 amends section 2105(c) of title 5 to provide that chapter 84 does not apply to employees of certain non-appropriated fund instrumentalities.

TITLE IV - AUTHORIZATION AND EFFECTIVE DATES.

Section 401 provides for payment of the fiscal year 1986 and 1987 expenses of the Civil Service Thrift Investment Board from appropriations.

Section 402 provides that this act takes effect January 1, 1987, except for subchapter VIII of chapter 84 (relating to the Civil Service Thrift Investment Board), which takes effect on the date of enactment, and the loan program required by section 8426(e) which must be established not later than January 1, 1988.